

REQUEST FOR COMMISSION ACTION

OG-07-06-715

Meeting: July 5, 2007 @ 9:00 a.m.
Request: To conditionally approve the Sapphire Country Estates, Lot 2E, Material Modification

I. ACTION REQUESTED

This is a request from Dale Janes, represented by Colleen Dowdall, to approve the **Sapphire Country Estates, Lot 2E, Material Modification of a filed plat.**

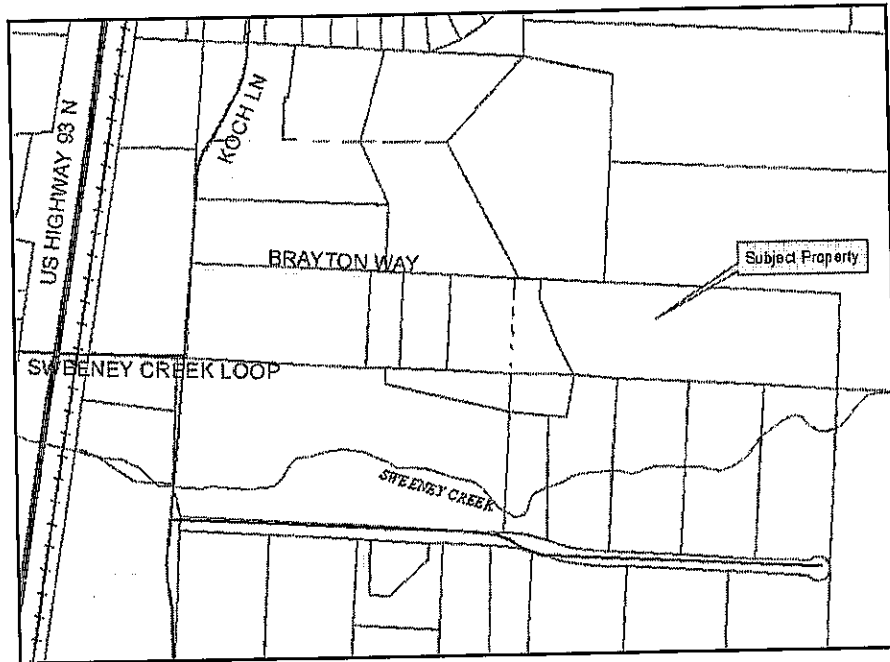
II. BACKGROUND

Section 3-4-6(b) of the Ravalli County Subdivision Regulations (RCSR) allows modifications to filed subdivision plats. These "material modifications" are allowable only if the proposed modification does not constitute a subdivision and cannot be considered an error on the face of the plat.

The applicant Dale Janes is requesting a material modification for Lot 2E of Sapphire Country Estates, originally a five lot subsequent minor subdivision given conditional approval in April of 1999. The final subdivision plat was filed with the Clerk and Recorder in January of 2001. As a condition of approval for the original 1999 division, the applicant was required to show a "no-build zone" on Lot 2E, which precludes the construction of buildings and structures within its envelope. The applicant is proposing to remove the no-build zone designation from Lot 2E and replace it with a "restricted area" designation. The applicant's proposal would allow for the construction of agriculturally related outbuildings, but preclude the construction of residences.

Lot 2E is currently undeveloped and is vegetated with a mixture of grasses and shrubs.

Staff is recommending conditional approval of the material modification proposal.



Map 1: Location Map
 (Source Data: Ravalli County Planning Department)

III. STAFF FINDINGS

Planning Staff makes the following findings in relation to this proposal:

1. The applicant is proposing to amend the current no build zone designation on the plat and replace it with a "Restricted Building Area" designation. The proposed re-designation would allow for the construction of agricultural outbuildings, but preclude the construction of residences.
 - a. The current no build zone begins at the top of a bench on the western portion of Lot 2E. The applicant is proposing to relocate the boundary of the proposed Restricted Building Area to the base of the bench.
2. The owner of record, Dale Janes, has the legal authority to request a material modification to the filed subdivision plat of Sapphire Country Estates, Lot 2, AP as described in the Ravalli County Subdivision Regulations (RCSR), Section 3-4-6(b).
3. The public hearing for the proposed material modification was properly noticed in accordance with Section 3-2-4 (Public Hearing – Notification Requirements) of the RCSR.
 - a. Notifications included the publication of a legal ad in the Ravalli Republic, written notice describing the proposal sent via certified mail to the applicant and all adjoining landowners, placement of a poster describing the proposal on the property, notifying the Planning Board of the proposal, and notifying affected agencies.
 - b. According to Section 3-2-4, property owners adjoining the subdivision are to receive a certified notification of the public hearing. This section further states

that "The failure of any person required by this section to receive the notice shall not invalidate or otherwise have any effect upon a public hearing or action taken on the application".

- c. Property owners not adjoining the subdivision were not notified.
4. The proposed material modification is not considered an error on the face of the plat and does not constitute a subdivision.
5. The preliminary hearing for Sapphire Country Estates, Lot 2E, AP subsequent minor subdivision was conducted by the Ravalli County Planning Board on February 10, 1999. At the preliminary hearing, the applicant's representative, Denis Applebury of Applebury Survey, presented the proposed preliminary plat. It appears from the record that the no build zone was shown on the preliminary plat. From the February 10, 1999 minutes: "Kirk [Thompson] commended Denis for the no build zone on the wet flat and he told Denis that it needs to be defined on the plat and Denis said he would do that."
6. The public hearing for the proposal was held on March 10, 1999. At this hearing, Terry Nelson of Applebury Survey presented the proposed amended plat. The minutes reflect that Mr. Nelson relayed to the Planning Board that there is a low area on the east of the subdivision, that the low area will have a no build zone placed upon it, and that the no build zone will help protect the natural environment.
7. The Preliminary Plat Decision (PPD) for the Sapphire Country Estates, Lot 2, AP, subsequent minor subdivision was mailed to the applicant on April 2, 1999.
8. The PPD makes the following findings in support of placing a no build zone on Lot 2E:
 - a. Section 4(d)(1): "There are no known wetlands on the subject property, except for those associated with the low area located on the easternmost portion of Lot 2E".
 - b. Section 4(f)(5): "The property is not located within the defined 100-year floodplain [of the Bitterroot River] as adopted by the Board of County Commissioners".
9. As a condition of approval for the original subdivision, the applicant was required to designate a single building site on Lot 2E for a residential structure and designate the remainder of the parcel as a no build zone.
10. A description of a no build/alteration zone is included in the covenants, which were filed with the final subdivision plat on January 12, 2001.
11. The applicant was not required to include the description of the no build/alteration zone in the covenants.
12. The provisions contained in the covenants for Sapphire Country Estates, Lot 2, AP can be amended, revoked, or altered only with the majority approval of lot owners subject to the covenants and the consent of the Board of County Commissioners of Ravalli County.
 - a. The applicant is proposing to file a separate covenant against Lot 2E that would reflect the proposed Restricted Building Area designation. The applicant is not proposing to gain the majority approval of lot owners to amend the existing covenant.

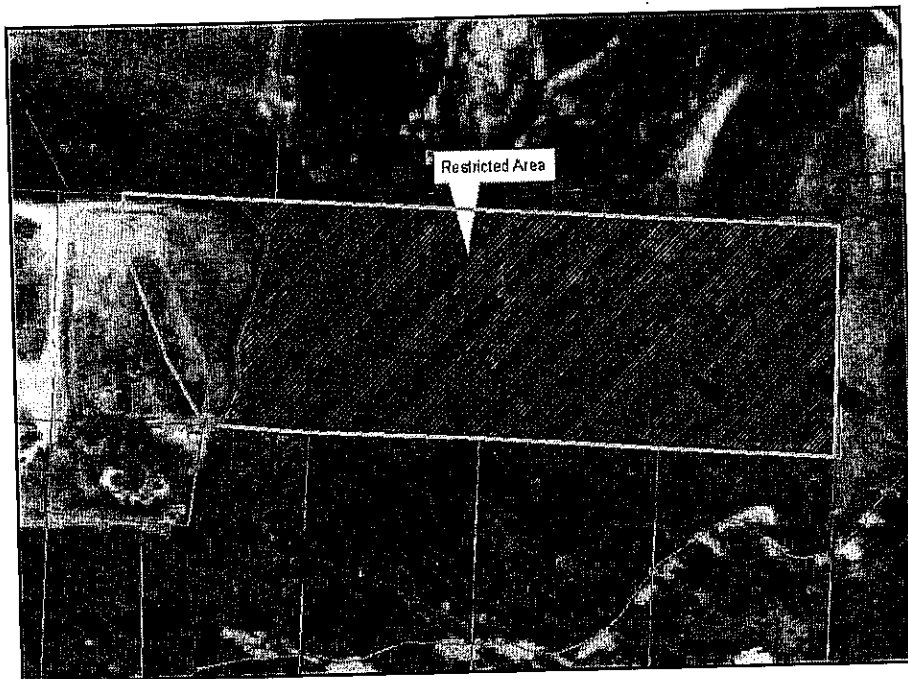
IV. PLANNING STAFF'S RECOMMENDED MOTION

That the material modification for Sapphire Country Estates, Lot 2E be conditionally approved.

V. PLANNING STAFF'S RECOMMENDED CONDITIONS

The following conditions are recommended to preserve as much as possible the intent of the original plat approval.

1. The amended final plat shall show a restricted area beginning at the top of the bench and extending to the eastern property boundary. (Map 2) [Staff note: Recommended Restricted Area preserves the same area originally included as a no build zone.]



Map 2: Approximate Location of Restricted Area
(Data Source: Ravalli County GIS Department)

2. The following statement shall be shown on the amended final plat: "Notification of Restricted Area. There is a restricted area on Lot 2E from the plateau of the bench east to the property boundary, as shown on the filed plat. No residential dwelling may be constructed in this area. Agricultural buildings and outbuildings shall be permitted." [Staff note: Allows for outbuildings, but generally maintains integrity of original no build zone.]
3. Amended protective covenants shall be submitted with the amended final plat that includes the following language: "Notification of Restricted Area. There is a restricted area on Lot 2E from the plateau of the bench east to the property boundary, as shown on the filed plat. No residential dwelling may be constructed in this area. Agricultural buildings and outbuildings shall be permitted." As noted in the covenants filed with the original subdivision plat, the applicant shall provide evidence that a majority of the lot owners subject to the covenants agree to the proposed amendment. [Staff note: Allows for requested changes, but also

preserves integrity of existing covenants. Compliance with existing covenants is required by subdivision regulations for all subdivisions.]

4. The scope of the final amended plat shall show only Lot 2E and must conform to the uniform standards for filing final plats (ARM 8.94.3003).

REMAINING ISSUES:	None known
FISCAL IMPACT:	No extraordinary fiscal impacts noted.
ATTACHMENTS:	Application package Public comments Planning Board minutes from June 6, 2007
STAFF:	John Lavey <i>JL</i>
DATE:	June 25, 2007

RECEIVED

JUN 20 2007
1C-07-06-763
Ravalli County Planning Dept.

June 18, 2007

Ravalli County Planning Department
John Lavey
215 South 4th Street, Ste F
Hamilton, MT 59840

Dear John,

As the owners of Lot 2C of Sapphire Country Estates, we are writing this letter regarding the Sapphire Country Estates, Lot 2E, Material Modification. We are very opposed to this modification for the several reasons. First of all, we are wondering how this can legally be reviewed. Please refer to the following:

- Page 1 of the attached Declaration of Protective Covenants for AP Lot 2, Sapphire Country Estates (Appendix A) specifically states, "**Applicability**. This declaration shall run with the land and shall be binding upon and enforceable by all parties having or acquiring any right, title, or interest in any real property subject to this declaration."
- Page 1 of the attached Declaration of Protective Covenants for AP Lot 2, Sapphire Country Estates (Appendix A) specifically states "**Amendments**. The provisions contained herein are revocable or alterable only with majority approval of lot owners and the consent of the Board of County Commissioners of Ravalli County."
- Page 2 of the attached Declaration of Protective Covenants for AP Lot 2, Sapphire Country Estates (Appendix A) specifically states "**Notification of No-Build/Alteration Zone**. Within this subdivision there is a no build/alteration zone as shown hereon to protect natural resources or other features. No structure, with the exception of fences, may be constructed in this area."

According to this Declaration of Protective Covenants (a legal and "binding" document), the only way to have this approved would be by a "majority approval of lot owners AND consent of the Board of County Commissioners of Ravalli County". My husband and I have never been notified that a change to the subdivision was even being considered. As property owners, we should be given a "vote" as referred to above. In an effort to get the decision he wanted, Mr. Janes completely avoided us.

Please see the attached "Amendment to Declaration of Protective Covenants" (Appendix B). This document was sent to our neighbors by the realtor for Lot 2E, in November 2006. When the neighbors chose not to sign the document, Mr. Janes went to 2 of the other 4 lot owners (not including us) to get the "backdoor"

approval. When he found out that he wouldn't have majority approval (from the others in the subdivision), he then took this to the planning department. After discussing this in depth with all property owners in the subdivision (with the exception of Mr. Janes), everyone will vote "NO". My question is...How can this be a decision the Board would even consider when our legal and "binding" document states that a vote of majority has to take place?

Mr. Janes has established a poor reputation for honesty and openness. It appears that he is trying to get a large sum of money for Lot 2E, when in reality it is a large piece of grazing land, with one small building site. He signed the legal and binding documents referred to above in agreement to the way the development is currently set up.

We have the understanding that the potential owners of Lot 2E would like this modified to add an indoor horse riding arena. Please refer to the following:

- Page 1 of Declaration of Covenants for AP Lot 2, Sapphire Country Estates, Article II, Protective Covenants (Appendix C) specifically states "The above-entitled land shall be used for residential purposes only, except as hereinafter provided, and no business, trade or manufacture shall be conducted thereon."

Since no business shall be conducted wouldn't it be inappropriate for classes to be conducted (where money is collected) at this riding arena? Please refer to the following:

- Page 1 of the Declaration of Covenants for AP Lot 2, Sapphire Country Estates, Article II, Protective Covenants (Appendix C) specifically states, "No buildings shall be erected, placed, or permitted to remain on any part of the above-described real property other than detached single family dwellings, not exceeding two (2) stories in height with exception of a basement, including a tool shed, private garage for the dwelling and reasonable outbuildings."

We would not consider an indoor horse riding arena to be considered a "reasonable outbuilding". These two items mentioned above may cause a legal battle between the future owners and the Homeowners Association of Sapphire Country Estates. This is a huge waste of everyone's time and money.

We chose to purchase this property to have a place where our son could play in the yard at the end of a quiet road. By modifying this property and adding an indoor riding arena, this will bring much more traffic to a road that is not County maintained. Who will be paying for the maintenance of this road when several horse trailers are driven on it each day, especially those coming to riding classes?

We are concerned as well about our son's safety as an indoor riding arena brings more traffic and strangers to our neighborhood. In addition to safety issues, an indoor riding arena adds much more dust to the air from the road, giving us poor air quality, and adding unnecessary noise and lights to our quiet neighborhood.

Please consider our concerns and say "NO" to changing the restrictions on Lot 2E. Not only is this the legal thing to do, it is the desire of everyone in the development (with the exception of Mr. Janes), and it will be nice to finally put this issue to rest.

Thank you for taking the time to read our concerns.

Sincerely,

Jesse & Jill Scott

Jesse & Jill Scott
Owners of Lot 2C, Sapphire Country Estates

CLERK AND RECORDER BY: Nedra P. Taylor Tena L. Miller

FEE: \$12.00

DECLARATION OF PROTECTIVE COVENANTS FOR
AP LOT 2, SAPPHIRE COUNTRY ESTATES

AP 474193

This declaration is made this 22nd day of December, 2000, by Dale Janes, hereinafter referred to as "declarant".

RECITALS

Whereas, the Declarant is the owner of the subject property as described below.

Now, therefore, Declarant declares that the property described herein shall be held, sold, conveyed, encumbered, used, occupied, and improved subject to the following easements, restrictions, covenants, liens, and conditions, all of which are in furtherance of a uniform plan of development, improvement and sale of said real property and are established to protect the natural environment and promote public health and safety and for the purpose of enhancing the value, desirability, and attractiveness of the real property and every part thereof.

ARTICLE I.

GENERAL PROVISIONS

Property Subject to Agreement. The following real property in Ravalli County, Montana and subsequent divisions thereof, are subject to this declaration:

AP LOT 2, SAPPHIRE COUNTRY ESTATES

Applicability. This declaration shall run with the land and shall be binding upon and enforceable by all parties having or acquiring any right, title, or interest in any real property subject to this declaration.

Term. The provisions contained herein shall run in perpetuity.

Amendments. The provisions contained herein are revocable or alterable only with majority approval of lot owners and the consent of the Board of County Commissioners of Ravalli County.

Severability. If a court of competent jurisdiction holds that a part(s) of this agreement is invalid for any reason, the validity of the remaining portions shall continue in full force and effect and the rights of the parties shall be construed as if the part(s) was never part of this agreement.

Venue. If legal action is necessary by any owner concerning this agreement, exclusive venue will lie with the District Court of the Twenty-First Judicial District of the State of Montana, located in Hamilton, Montana.

Litigation Fees. Should any party initiate litigation, arbitration, or mediation concerning this agreement, the prevailing party(ies) shall receive from the opposing party(ies) financial compensation for all related costs, including reasonable attorney's fees and expert witness fees.

Waiver or Abandonment. The waiver of, or failure to enforce any breach or violation of any provision of this declaration, shall not be deemed to be a waiver or abandonment of such provision, or waiver of the right to enforce any subsequent breach or violation of such provision.

Enforcement. The Declarant, any owner, or Ravalli County may enforce by any proceeding at law or in equity these provisions against any person or persons violating or attempting to violate any provision either to restrain violation or to recover damages.

Definitions. For the purpose of this declaration, certain terms and phrases are defined below and shall have the meaning ascribed to them.

Ret: Dale Janes, 640 Outback Rd., Glendale, MT 59833

"Owner" means the record owner (including without limitation the declarant), whether one or more persons or entities, of the fee simple title to any tract of land subject to this agreement, except that where such a tract of land has been sold of an installment sale basis pursuant to a security instrument, the buyer (provided he is not in default under said security instrument) shall be deemed the owner. The term shall not mean or refer to a mortgage unless and until such mortgagee has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure.

"Structure" means any permanent or temporary object that is constructed, installed, or placed by man, which requires a location on a parcel of land. It includes buildings of all types, bridges, instream structures, storage tanks, walls, fences, swimming pools, towers, antennas, poles, pipelines, transmission lines, smokestacks, signs, and similar objects.

Indemnification. The undersigned, their heirs, successors and assigns, and all future owners of property within the subdivision, agree to hold Ravalli County and the declarant harmless and indemnify Ravalli County and its employees, officials, and agents and the declarant from all claims, demands, obligations, suits, causes of action, damages, and liability, including the County's costs and attorney's fees, arising in any manner whatsoever out of, or relating to, the existence, use, operation, repair, and/or maintenance of the following:

ARTICLE 2.
DEVELOPMENT STANDARDS

Control of Noxious Weeds. Lot owners shall control the growth of noxious weeds on their respective lot(s).

Notification of Irrigation Ditch/Pipeline Easement. Within this subdivision there is an irrigation ditch or ditches. All downstream water right holders have the right to maintain and repair their ditches and diversion structures whenever necessary to keep them in good condition. The width of the maintenance easement is based on historical practices. Fences may cross an irrigation ditch, provided a gate allows historical access along the ditch. In addition, each downstream water right holder needs to approve any relocation or alteration (i.e. installation of a culvert) of an irrigation ditch. Any act which damages or destroys a ditch, interferes with its operation or maintenance in any way, or restricts access to the ditch so as to interfere with its maintenance is expressly prohibited.

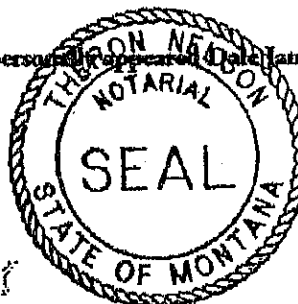
Notification of Road Maintenance. Ravalli County, the State of Montana, or any other governmental entity does not maintain the roads within this subdivision and therefore does not assume any liability for improper maintenance or the lack thereof. A Road Maintenance Agreement was filed with this subdivision and outlines who is responsible for road maintenance and under what conditions.

Notification of No-Build/Alteration Zone. Within this subdivision there is a no build/alteration zone as shown hereon to protect natural resources or other features. No structure, with the exception of fences, may be constructed in this area.

X Dale Jones
Dale Jones

Subscribed and sworn before me this 22nd day of December, 2000 personally appeared Dale Jones known to me to be the person whose name is subscribed to this instrument.

Shirley Nelson
NOTARY PUBLIC FOR THE STATE OF MONTANA
residing at Corvallis
my commission expires 4-13-2003



11/22/06

**AMENDMENT TO DECLARATION OF PROTECTIVE
COVENANTS
AP LOT 2, SAPPHIRE COUNTRY ESTATES**

This declaration is made this ____ day of _____, 2006, by a majority of the lot owners of the AP Lot 2, Sapphire Country Estates subdivision, as an amendment to the covenants previously recorded on January 12, 2001 at Records of Ravalli County No. 474195.

This amendment is made in accordance with the General Provisions, Article 1 of the Covenants which allows this alteration with the majority approval of the lot owners and the consent of the Board of County Commissioners of Ravalli County, Montana. The lot owners agree to the following amendment:

**ARTICLE 2.
DEVELOPMENT STANDARDS**

***Notification of No-Build/Alteration Zone.* A residence may not be built in the designated no-build/alteration zone, shown on the plat. The area may be used for fences, barns, sheds, shops, outbuildings, or corrals, intended for the use of the owners and occupants of Lot 2E of Sapphire Country Estates Subdivision for private agricultural and/or private equestrian related uses and activities and in compliance with the other provisions of these covenants.**

All other provisions of the covenants remain unchanged.

Lot 2A

Subscribed and sworn before me this ____ day of _____, 2006 personally known to me to be _____ the individual whose name is subscribed to this instrument.

**NOTARY PUBLIC FOR
THE STATE OF MONTANA**
Residing
at: _____

**My Commission
Expires: _____**

RECORDED: 01/12/2001 10:56 COVENANTS

CLERK AND RECORDER BY: Tena L. Miller

FEE: \$30.00

A.P. 47493

DECLARATION OF COVENANTS FOR

AP LOT 2, SAPPHIRE COUNTRY ESTATES

This declaration is made this 22nd day of December, 2000, by Dale Janes, hereinafter referred to as "declarant".

ARTICLE II

Protective Covenants

The following protective covenants are designed to provide a uniform plan for the development of the Properties. They shall constitute a covenant running with the land for each Tract within the Properties.

Section 1. Land Use and Building Type. The above-entitled land shall be used for residential purposes only, except as hereinafter provided, and no business, trade or manufacture shall be conducted thereon. No buildings shall be erected, placed, or permitted to remain on any part of the above-described real property other than detached single family dwellings, not exceeding two (2) stories in height with exception of a basement, including a tool shed, private garage for the dwelling and reasonable outbuildings. All single family dwellings shall have a minimum main floor space of sixteen hundred (1600) square feet, exclusive of any porches or attached garage. No building for residential use shall exceed twenty-eight (28) feet to the top line of the roof joist from the average grade at side elevation. All dwellings on said lots shall be constructed with a minimum of 85% of new material and no buildings shall be moved from any other location on any of the said lots. All dwellings shall have a minimum pitch on the roof of 3"/12". No asphalt siding shall be allowed on any building as an exterior finish. No domes, geodesic structures, mobile, manufactured, or trailer houses shall be allowed. The homes and buildings shall be of an earth tone color. No block structures are allowed. Brick homes are allowed. No residential structure shall be occupied for residential purposes until the same is completely finished on the outside with siding installed and painted or with brick, stone, or stucco veneer which must be completed within one (1) year after commencement of construction. All structures shall be so constructed and erected so that the same will not detract from other buildings erected on said real property. All buildings shall also comply with normal building design available in the industry. No construction shall be commenced until such time as the well has been installed and septic system has been approved by all applicable governmental agencies.

Section 2. Subdividing of Building Lots and Building Sites Thereon. No lot shall be divided. No lot shall have more than one dwelling home, and one guesthouse located upon it. All utilities, i.e., electricity, TV cable, gas, and telephone lines shall be buried.

Section 3. Animals. No pigs or hogs will be permitted on these parcels. Household pets, i.e., cats and dogs, will be permitted. Dogs shall be confined to the parcel of their owner and shall not be permitted to run at large. Dogs, when not in the immediate control of their owner shall be kept in a fenced kennel. Horses will be allowed.

Ret: Dale Janes, 640 Outback Rd., Florence, MT 59833

(f) Compliance Assessments. In addition to other assessments herein provided, Association may levy an assessment for the purpose of defraying costs including legal fees to enforce this Declaration. Any such assessment shall have the approval of a simple majority of votes of Members who are voting in person or by proxy at a meeting duly called to consider such compliance assessment. The Board of Directors is authorized to return funds assessed hereunder, if, in conjunction with enforcement, it recovers costs.

Commencement of Assessments. The Board of Directors is authorized to commence initial assessments as herein authorized at such times as it determines appropriate. Written notice of assessments shall be sent to every Owner subject thereto. The Board of Directors shall establish the due dates.

Certificate of Payment. Association shall upon demand at any time furnish a certificate in writing signed by an officer of the Association setting forth whether the assessments on a specified lot have been paid. The Board of Directors may make a reasonable charge for issuance of these certificates. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

Nonpayment of Assessments. Any assessments or installment payments on assessments, which are not, paid when due shall be delinquent. Association may establish policies concerning the assessment of interest for delinquent accounts. Association may bring an action at law to collect the Amount of assessment, together with interest, costs and reasonable attorney fees for such action, or may take action to perfect and collect on the lien involved.

Property subject to assessments. Each separate parcel or building site shall be subject to assessment by the Association as herein provided.

Section 8. The Homeowners Association as set forth in these restrictive covenants shall also have the power and authority to perform all the purposes of any other homeowner's association that is provided for or authorized by any restrictive covenants preceding this Declaration in regards to the real property described above.

Section 9. Road Construction and Maintenance. All access roads in the real property shall have a minimum right-of-way of sixty (60) feet, which will include utility easements when possible, and shall have a minimum width road bed of twenty (20) feet, and be so constructed as to be classed as an all-weather road. Responsibility for road maintenance shall fall to the individual parcel owners proportionally so that each lot of ownership shall be responsible for their respective proportional share of said road maintenance costs not to exceed a total of Three Hundred Dollars (\$300.00) per year, unless all owners agree or a service assessment for road maintenance is fixed pursuant to Article I, Section 7.

Section 4. Signs. No advertising signs, billboards, or unsightly objects shall be erected, placed, or permitted to remain on any part of the above-described real property except real estate promotion signs, mailboxes, name plates, or house numbers to identify the occupancy of a residential building.

Section 5. Garbage. No Tract shall be used or maintained as a dumping ground, nor shall any rubbish, trash, garbage, or other waste be allowed to accumulate except in sanitary containers which shall be emptied on atleast a weekly basis. No such receptacles shall be placed closer than twenty (20) feet from the front property line of any Tract unless the same is completely screened from sight by a suitable enclosure, which does not create an unsightly area or interfere with the surrounding residential development. On garbage collection days, garbage cans may be placed in a location convenient for collection. All such garbage shall conform to local and state health and fire regulations.

Section 6. Nuisance. No part of any lot or building plot shall be used for a cemetery, automobile wrecking yard, rendering plant, abattoir, saw mill or planing mill of any description, junk yard of any type, garbage pit or refuse area, or any other unsanitary, obnoxious or offensive commercial or industrial purpose, and no noxious or offensive activity shall be carried on upon any lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.

Section 7. Access. No owner, except Declarant, shall grant access to any lands adjoining the property over and across any Tract within the property.

Section 8. Roofs. No building on the properties shall have metal roofs unless the roofs have a factory coating applied, which is colored. Galvanized metal roofs are prohibited.

Section 9. Yard Lights. Yard lights are allowed except no yard light shall exceed the height of eight (8) feet.

Section 10. Sanitary Restrictions. The owner of any property shall comply with all governing laws and regulations relating to water supply, sanitation, sewage disposal, and air pollution.

Section 11. Architectural Control. No dwelling house, garage, fence, enclosure, or any other structure shall be erected, placed, or altered on any Tract until the construction plans and specifications, together with the proposed site plans therefor have been approved by the Developer as to the quality of workmanship and materials, harmony of external design with existing structures in the surrounding area and location of the structure with respect to topography and finish grade elevation.

Section 12. Architectural Control Approval. Approval or disapproval by the Developer shall be in writing. In the event the Developer fails to act within thirty (30) days after the proposed plans and specifications of any structure have been submitted, no specific approval shall be required for such structure as the pertinent provisions of this Declaration shall be deemed to have been fully satisfied. If no suit is commenced to enjoin construction of a dwelling house prior to its completion, or within thirty (30) days of the time construction is commenced, whichever is longer, said dwelling shall thereafter be deemed to be in compliance with this Declaration.

The Developer shall not be liable to any owner for damage, loss or prejudice suffered as a result of performance of the architectural control provided, however, that Developer has, with actual knowledge possessed by him, acted in good faith.

Prior to commencement of construction or approval of plans, the Developer shall require submission of the following preliminary information:

- (a) Location of all present and/or proposed structures;
- (b) Location of all required access roads;
- (c) Parking areas;
- (d) Fences;
- (e) Landscaping;
- (f) Dams and drainage systems design;
- (g) Contour plot plan of area to be developed;
- (h) Sewage disposal system;
- (i) Water system, including estimated usage;
- (j) Soil study;
- (k) Building floor plan;
- (l) Exterior elevations and exterior openings of buildings;
- (m) Intended building use;
- (n) Exterior finishes and materials;
- (o) Square footage;

Section 13. Vehicles. No trucks exceeding one (1) ton, trailers, semi-trailers, or other large commercial machinery, or any unsightly vehicles shall be parked or allowed to remain on said properties unless stored in a garage or otherwise completely screened from view by screening approved by the Developer.

Section 14. Recreational Vehicle and Power Equipment Use. No recreational vehicles, including motorcycles, snowmobiles, all-terrain vehicles, go-carts, dune buggies and all other types of recreational vehicles shall be operated or used on the properties without a functional muffler and spark arrestor and such vehicles shall be

Operated on the vehicle owner's property and only as permitted by state law. Such vehicles and other types of power equipment shall not be operated in a manner that creates a nuisance or annoyance.

Section 15. Surrounding View. In order to ensure that the view of surrounding Tract owners is not impaired by unsightly objects, clutter or illuminants, no pole or other object which disturbs the view from other Tracts shall be allowed for yard lighting, television reception, radio communication, or other similar purpose. Detached yard or street lighting shall be limited to pedestals not more than eight (8) feet in height and shall be shielded to direct light only in a downward direction.

Section 16. Landscaping. When any structure is erected on any Tract, the property owner of such Tract shall, within a reasonable period of time, remove any unsightly underbrush and landscape the Tract appropriate to its environment. The property must be watered sufficiently to keep grass reasonably green and to prevent any grass fires. All Tracts shall have brush, litter, and readily combustible materials removed.

Section 17. Fires and Fire Safety. All wood burning equipment, including stoves and fireplaces shall comply with all local and state laws and regulations. Barbecue pits shall be allowed, provided that they are surrounded by a minimum of ten (10) feet of non-combustible material. There shall be no fires without appropriate governing body permission, and adequate supervision necessary to protect the other Tracts in the area. Fires shall be controlled and managed in accordance with local and state laws and regulations. Any property owner who fails to control any fire for which he is responsible which damages all or portions of any other Tract or Tracts, shall be liable for all damages caused by said fire.

ARTICLE III

Enforcement

These covenants and all parts thereof may be enforced by the Declarant, the Association, or the Owner of any Tract by appropriate proceeding at law or in equity, and may include proceedings to enjoin the violation and recover damages. Invalidation of any one of the restrictions shall in no way affect the other provisions, which shall remain in full force and effect. Failure to enforce any provisions shall not be deemed a waiver of the right to do so thereafter. If suit is brought for the enforcement of any of these covenants, the unsuccessful party shall pay to the successful party a reasonable attorney's fee to be fixed by the Court. The successful party shall be entitled to his costs of suit.

Subscribed and sworn before
me this 22nd day of
December, 2000 personally
appeared Dale Janes known
to me to be the person whose
name is subscribed to this
instrument.

NOTARY PUBLIC FOR
THE STATE OF
MONTANA
residing at *Corvallis*
my commission expires
12/31/2003



Dale Janes

RECEIVED
JUN 20 2007
16-07-06-764
Ravalli County Planning Dept.

June 10, 2007

Planning Department
215 4th Street, Ste. F
Hamilton, MT 59840

Attn: Board of County Commissioners

Re: Sapphire Country Estates, Lot 2E, Material Modification (Janes)
OG-07-05-562

To the Ravalli County Board of Commissioners,

The property owners of Sapphire Country Estates have already been approached to modify the "No Build Zone" of Lot 2E of the "Finalized and Approved Plat Map". The parcel owners as a whole voted against the modification to this said Lot.

The process by Dale Janes to obtain approval for amending this parcel was less than professional. He contacted two (2) of the five (5) owners within the subdivision in hopes to obtain a three (3) to two (2) majority rule to modify Lot 2E. However, the notified owners contacted the remaining owners of the subdivision with the proposed modification and with discussion it was voted down.

It was only then that Jane's Realtor sent out via E-mail an "Amendment to Declaration of Protective Covenants" for the modification of Lot 2E (see Attached). Needless to say the subdivision owners had already voted not to allow the amendment to pass.

As a parcel owner at the end of Brayton way, I thought the issue of modifying Lot E was ruled out only to receive this certified letter from the County Planning Department to amend Lot 2E from a "No Build Zone" to a "Restricted Area" designation. I contacted the remaining property owners within the Subdivision to once again discuss this issue only to find out they had not received a letter, therefore were unaware an amendment to Lot 2E was still a possibility.

My husband and I purchased a home at the end of Brayton Way and a lot within the Sapphire Country Estates from Janes. A Protective Covenants and Plat Map indicated this subdivision was for Single Family Dwellings and that Lot 2E with a Designated Building Site along with a "No Build Zone" would create and maintain a

"Pristine Open Land Area" for grazing etc. This insured us that no structures would be constructed past the "No Build Zone". The "No Build Zone" eliminated possible Light Pollution from structures beyond the designated building site. This guaranteed our neighborhood of the original intent of a rural setting, being large lots, little or no encroachment on wildlife and the elimination of light pollution to our night skies. Please see attached Protective Covenants for AP Lot 2 Sapphire County Estates, Article 2 Development Standards, "Notification of No-Build/Alteration Zone" that exists in the Subdivision, being Lot 2E.

In addition to this concern I was notified twice by a perspective purchaser of Lot 2E. They would like to construct an arena and other out-buildings so they can continue to operate an equestrian facility similar to the one they currently have in Colorado. These desires would include lessons and possible stabling, which could also include some events at their location.

If an equestrian facility was constructed whether private or public it would mean more lighting the need for additional water and septic. Lot 2E does not pass the percolation test for its own septic system, requiring a septic easement from Lot 2D. The out-buildings would not be able to house a kitchen/ toilet facility without installing an additional septic system as required by the County. The issue of wells, one (1) well for the residence a possible second (2) well for the horse facility may be necessary. This is a concern as three property owners that I am aware of directly adjacent or within this subdivision has had to lower their wells to obtain water. This may be a direct result of the many subdivisions that have been developed at a close proximity to our parcels. Therefore a second (2) well on Lot 2E would be detrimental to our water sources.

No matter the quantity of equestrian students or the number of horses stabled, this adds a new description to a Single Family Residence Subdivision and also modifies the existing peaceful family atmosphere of our community. This would hinge on being a commercial parcel not a residential parcel within our subdivision.

If this amendment is approved the possibility of increased traffic on Brayton Way would be inevitable as would the dust from the non-paved road. The most important point with increased traffic is the added risk to our children and pets.

The amendment concerns me in many ways as mentioned above. In addition our association would have to allocate additional funds to maintain Brayton Way which would be divided equally among property owners but would be for the benefit of Lot 2E.

Our Home Owner's Association's Protective Covenants and Plat Map are in place to protect the parcel owners from this type of construction/business. Otherwise these pieces of documentation are deemed worthless.

I am requesting the County Commissioners take in consideration my concern of amending this Parcel to maintain our neighborhood as it was originally designed by Dale Janes and not allow the amendment from a "No Build Zone" to a "Restricted Area" designation.

Please find attached photos of Lot 2E and Brayton Way, to better understand the property in question.

Sincerely,

Carol Mavros MK.

Carol Mavros
Sapphire Country Estates Property Owner & Adjacent Property
Owner



Brayton Way



Overlooking Lot 2E

From: JGiltmar532@aol.com
Date: 11/22/2006 12:56
To: <cmdesigns@hughes.net>
Cc:
Subject: Thanksgiving Greetings & Business

- Add Contacts
- Filter Junk Mail
- Show All Headers
- Print View

Attachments:  Sapphire Country Amendment to Covenants.doc (28 KB)



Greetings and Thanksgiving Blessings, Carol & Mike

As you know Jim and Judy Moore are soon to be your new neighbors. They are "horse people" like yourselves and in order for them to construct the normal horse related facilities that you "horse people" require, a clarification/addition to the existing Sapphire Country Estates restrictive covenants must be made. I have enclosed the proposed modification as a Word attachment. Please look it over and call me at 240-5249 or email me if you take exception to this proposal. Quite frankly the "No-Build" issue was originally intended to help preserve the integrity of your neighborhood by not allowing residential development down below on the 10 acres, but it was never intended to restrict a homeowner from erecting the logical infrastructure that would normally accompany a parcel like Lot 2E. If all looks OK to you, then please sign & notarize the page for Lot 2D. I can pick it up at Mike's shop or swing by your place. Whatever is best for you. In the meantime, have a wonderful & sumptuous feast tomorrow. I hope all is exceptional for you guys. Again, don't hesitate to call or email me if you have any questions. Jim & Judy should be great neighbors.....I guess one can't have

Cheers!



too many good architects in the neighborhood

*Dale James Reattor's
Correspondence*

11/22/06

**AMENDMENT TO DECLARATION OF PROTECTIVE
COVENANTS
AP LOT 2, SAPPHIRE COUNTRY ESTATES**

This declaration is made this ____ day of _____, 2006, by a majority of the lot owners of the AP Lot 2, Sapphire Country Estates subdivision, as an amendment to the covenants previously recorded on January 12, 2001 at Records of Ravalli County No. 474195.

This amendment is made in accordance with the General Provisions, Article 1 of the Covenants which allows this alteration with the majority approval of the lot owners and the consent of the Board of County Commissioners of Ravalli County, Montana. The lot owners agree to the following amendment:

**ARTICLE 2.
DEVELOPMENT STANDARDS**

Notification of No-Build/Alteration Zone. A residence may not be built in the designated no-build/alteration zone, shown on the plat. The area may be used for fences, barns, sheds, shops, outbuildings, or corrals, intended for the use of the owners and occupants of Lot 2E of Sapphire Country Estates Subdivision for private agricultural and/or private equestrian related uses and activities and in compliance with the other provisions of these covenants.

All other provisions of the covenants remain unchanged.

Lot 2A

Subscribed and sworn before me this ____ day of _____, 2006 personally known to me to be _____ the individual whose name is subscribed to this instrument.

**NOTARY PUBLIC FOR
THE STATE OF MONTANA**
Residing
at: _____

**My Commission
Expires: _____**

Lot 2B

**Subscribed and sworn before me this ____ day of
_____. 2006 personally known to me to be
_____ the individual whose name is
subscribed to this instrument.**

**NOTARY PUBLIC FOR
THE STATE OF MONTANA**
Residing
at: _____

My Commission
Expires: _____

Lot 2C

Subscribed and sworn before me this ____ day of _____, 2006 personally known to me to be _____ the individual whose name is subscribed to this instrument.

NOTARY PUBLIC FOR
THE STATE OF MONTANA
Residing
at: _____

—
My Commission
Expires: _____
—

Lot 2D

Subscribed and sworn before me this ____ day of
_____. 2006 personally known to me to be
_____ the individual whose name is
subscribed to this instrument.

NOTARY PUBLIC FOR
THE STATE OF MONTANA
Residing
at: _____

My Commission
Expires: _____
—

Lot 2E

Subscribed and sworn before me this ____ day of _____, 2006 personally known to me to be _____ the individual whose name is subscribed to this instrument.

NOTARY PUBLIC FOR
THE STATE OF MONTANA
Residing
at: _____

My Commission
Expires: _____

FEE: \$12.00

CLERK AND RECORDER BY: Tena L. Miller

DECLARATION OF PROTECTIVE COVENANTS FOR

AP LOT 2, SAPPHIRE COUNTRY ESTATES

AP 474193

This declaration is made this 23rd day of December, 2000, by Dale Janes, hereinafter referred to as "declarant".

RECITALS

Whereas, the Declarant is the owner of the subject property as described below.

Now, therefore, Declarant declares that the property described herein shall be held, sold, conveyed, encumbered, used, occupied, and improved subject to the following easements, restrictions, covenants, liens, and conditions, all of which are in furtherance of a uniform plan of development, improvement and sale of said real property and are established to protect the natural environment and promote public health and safety and for the purpose of enhancing the value, desirability, and attractiveness of the real property and every part thereof.

ARTICLE 1.

GENERAL PROVISIONS

Property Subject to Agreement. The following real property in Ravalli County, Montana and subsequent divisions thereof, are subject to this declaration:

AP LOT 2, SAPPHIRE COUNTRY ESTATES

Applicability. This declaration shall run with the land and shall be binding upon and enforceable by all parties having or acquiring any right, title, or interest in any real property subject to this declaration.

Term. The provisions contained herein shall run in perpetuity.

Amendments. The provisions contained herein are revocable or alterable only with majority approval of lot owners and the consent of the Board of County Commissioners of Ravalli County.

Severability. If a court of competent jurisdiction holds that a part(s) of this agreement is invalid for any reason, the validity of the remaining portions shall continue in full force and effect and the rights of the parties shall be construed as if the part(s) was never part of this agreement.

Venue. If legal action is necessary by any owner concerning this agreement, exclusive venue will lie with the District Court of the Twenty-First Judicial District of the State of Montana, located in Hamilton, Montana.

Litigation Fees. Should any party initiate litigation, arbitration, or mediation concerning this agreement, the prevailing party(ies) shall receive from the opposing party(ies) financial compensation for all related costs, including reasonable attorney's fees and expert witness fees.

Waiver or Abandonment. The waiver of, or failure to enforce any breach or violation of any provision of this declaration, shall not be deemed to be a waiver or abandonment of such provision, or waiver of the right to enforce any subsequent breach or violation of such provision.

Enforcement. The Declarant, any owner, or Ravalli County may enforce by any proceeding at law or in equity these provisions against any person or persons violating or attempting to violate any provision either to restrain violation or to recover damages.

Definitions. For the purpose of this declaration, certain terms and phrases are defined below and shall have the meaning ascribed to them.

Ret: Dale Janes, 640 Outback Rd., Florence, MT 59833

"Owner" means the record owner (including without limitation the declarant), whether one or more persons or entities, of the fee simple title to any tract of land subject to this agreement, except that where such a tract of land has been sold of an installment sale basis pursuant to a security instrument, the buyer (provided he is not in default under said security instrument) shall be deemed the owner. The term shall not mean or refer to a mortgagee unless and until such mortgagee has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure.

"Structure" means any permanent or temporary object that is constructed, installed, or placed by man, which requires a location on a parcel of land. It includes buildings of all types, bridges, instream structures, storage tanks, walls, fences, swimming pools, towers, antennas, poles, pipelines, transmission lines, smokestacks, signs, and similar objects.

Indemnification. The undersigned, their heirs, successors and assigns, and all future owners of property within the subdivision, agree to hold Ravalli County and the declarant harmless and indemnify Ravalli County and its employees, officials, and agents and the declarant from all claims, demands, obligations, suits, causes of action, damages, and liability, including the County's costs and attorney's fees, arising in any manner whatsoever out of, or relating to, the existence, use, operation, repair, and/or maintenance of the following:

ARTICLE 2
DEVELOPMENT STANDARDS

Control of Noxious Weeds. Lot owners shall control the growth of noxious weeds on their respective lot(s).

Notification of Irrigation Ditch/Pipeline Easement. Within this subdivision there is an irrigation ditch or ditches. All downstream water right holders have the right to maintain and repair their ditches and diversion structures whenever necessary to keep them in good condition. The width of the maintenance easement is based on historical practices. Fences may cross an irrigation ditch, provided a gate allows historical access along the ditch. In addition, each downstream water right holder needs to approve any relocation or alteration (i.e. installation of a culvert) of an irrigation ditch. Any act which damages or destroys a ditch, interferes with its operation or maintenance in any way, or restricts access to the ditch so as to interfere with its maintenance is expressly prohibited.

Notification of Road Maintenance. Ravalli County, the State of Montana, or any other governmental entity does not maintain the roads within this subdivision and therefore does not assume any liability for improper maintenance or the lack thereof. A Road Maintenance Agreement was filed with this subdivision and outlines who is responsible for road maintenance and under what conditions.

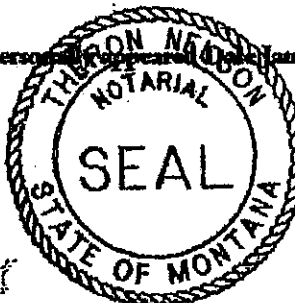
Notification of No-Build/Alteration Zone. Within this subdivision there is a no build/alteration zone as shown hereon to protect natural resources or other features. No structure, with the exception of fences, may be constructed in this area.

X

Dale Jones

Subscribed and sworn before me this 22nd day of December, 2000 personally appeared Dale Jones known to me to be the person whose name is subscribed to this instrument.

NOTARY PUBLIC FOR THE STATE OF MONTANA
residing at Corvallis
my commission expires 4-13-2003



RECEIVED

JUN 20 2007
1C-07-06-765
Ravalli County Planning Dept.

June 13, 2007

Planning Department
215 South 4th St; Suite F
Hamilton, MT 59840

Attn: Board of County Commissioners

Re: Sapphire Country Estates, Lot 2E, Material Modification (Janes)
OG-07-05-562

This development was created with stipulations that were mandated to the developer by the county. The area being discussed was to be a no build zone. Now because of hardship selling this last lot, the developer wants it changed. This is mainly because of interest in a party to buy lot E, if they can build in the no build zone. I am not a developer, nor am I as professional in my words as some, however the proposed change brings about several concerns to all of us in the subdivision. These concerns have been talked about within our home owners association, and we have decided that we are sternly against this restriction being lifted. I also wonder why if in our ccr's, as well as the description of the approved subdivision it clearly states the no build zone, that this can be changed without the approval of the members of this subdivisions home owners association. Why were the owners/members not all sent certified letters about this proposed change? I am not a lawyer, but I do believe that a home owners association has legal rights to changes within its subdivision.

The reasons for not wanting the no build zone changed are many. If you look at this land, and the pastures between it, and the eastside highway it is pretty evident that we have unobstructed views from our lot clear to said highway. There are deer, pheasants, fox, ducks, geese, and many other wildlife that make this area their home. It provides a secure area that only gets bothered by grazing cattle, or horses. Just this last week I got to see a new born fawn that was just learning to stand, and walk. This is part of the attraction of living here. Another concern besides the loss of any kind of a decent view, and the encroachment on the existing wildlife is the impact of what the prospective buyer relayed to my wife in conversation about what their intent of building in the no build zone would be, and would be used for. The gentleman interested in the property relayed that his wife is a horse trainer. He suggested that they would build an indoor arena, and stable facility. He also indicated that they may have a class once in awhile at this new proposed arena. We are horse people, and are familiar with what takes place in such a scenario. First of all, our ccr's prohibit the running of any businesses in this development. This may be something that if this gets approved, and they do build their arena will be very hard to enforce/prove. We are concerned about the added traffic to our road/subdivision. Dust, wear, and more traffic are concerns as we do have some small children here that will before long be out playing. Another concern about having such a facility is the necessity for an additional well for said facility. I sincerely doubt they would run their home, and arena/barn, and water their pasture(s) on one well. The wells in our subdivision have all had to be lowered to reach water already. The water has dropped that much. There is a new subdivision just up the road with an estimated 20+

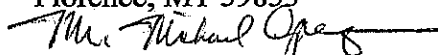
homes going in. Each of these is on its own new well. Our wells will have to be dug deeper if the ground water drops any further. They have been dropped as far as they can be, or at least I know ours has. According to my well guy, most well pumps can only be dropped one time before getting into the dirt, and that's if the well was dug a bit deeper than where the pump already sits.

There are a couple more things about how this has all come about that bother me greatly. The developer has already tried to backdoor his way around our associations right to know, and vote on this matter. He approached an owner about the proposed change in an effort to get a majority consent without notifying all owners. The owners he approached are the furthest lot from the one in discussion here. This measure backfired on him because he did not realize he was dealing with individuals with morals. The notified owners notified the remaining owners as to the proposed change, as they felt it was not right to not include the remaining owners in such a decision without their knowledge. This is what I call a good neighbor. Oh, and said owners are against the change anyways. Clearly, Mr. Janes does not care what any of us think, and again is trying to change this without involving the other owners of our association. Another bothersome thing is that the prospective buyers have already asked us what we thought about building their facility. The fact they cared to ask was important to us. After much thought we respectfully told them we did not think we would want such a facility. The thing that bothers me about that is that they plan on moving ahead if they can get this no build zone changed, regardless of how we feel.

We bought in here knowing the area described was a no build zone. The county required Mr. Janes to include this area as a no build zone as part of the approval for his minor 5 lot subdivision. I would ask you, why did they make such a requirement if it was not meant to be a permanent one? What were the original reasons for making it a no build zone? I would also ask that someone come and physically look at the ground water that sits about a foot beneath the ground level in a large watering hole in the west end of this area. It would seem to me that building any structure in this kind of ground water would be difficult to say the least. We gave Mr. Janes an easement for the described lots septic field, as said lot does not meet county requirements for one. This lot has a buildable site on it, and is saleable. What this boils down to is the fact that Mr. Janes has not been able to sell this lot. I believe the reason for that is because of his selling/asking price, not the no build zone. A majority of this lot was meant to be pasture, and therefore in my opinion, not worth as much as a same sized parcel in this valley that is all useable land. Mr. Janes knew about the no build zone when he signed the subdivision approval records. If this was a big concern then, why did he not try to change it then? This is about a developer turning a buck.

Please consider our concerns before making any decision here. Please consider the views of all concerned.

Respectfully, Mr. Mike Jacquier
334 Brayton Way
Florence, MT 59833



Owner of lot 2D, and adjoining lot to the south of it.

RECEIVED

June 22, 2007

JUN 26 2007

Ravalli County Commissioners

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Planning Department
215 4th Street, Ste. F
Hamilton, MT 59840

RECEIVED

JUN 26 2007
IC-07-06-814
Ravalli County Planning Dept.

Attn: Board of County Commissioners

RE: Sapphire County Estates, Lot 2E, Material Modification (Janes)
OG-07-05-562

To the Ravalli County Board of Commissioners and Planning Review Board,

Regarding the "Amendment to Declaration of Protective Covenants" for material modification of Lot 2E, I, Judy Heimkes, (a homeowner in this development) am opposed to the requested change in the covenants of Sapphire County Estates.

According to the Sapphire County Estates Covenants, a majority of homeowners need to approve a change in the covenants. Our association has 5 property owners. Only one owner has submitted this change to Lot 2E (a no-build zone to a "restricted area"). This owner has not received a majority vote of the current property owners.

This application is in violation of the covenants and needs to be rejected on these grounds. Covenants are the ONLY security a property owner/potential property owner has to protect a property investment in this valley.

Please respect the process put in place by the Sapphire County Estates Covenants under which all property owners purchased their property and built their homes, and reject this material modification change to Lot 2E. If you have any questions regarding this issue, please call me at my home, 406-777-3528.

Sincerely,

Judy L. Heimkes

Sapphire County Estates Property Owner

cc: Commissioners



**Montana Fish,
Wildlife & Parks**

RECEIVED

JUN 28 2007

160706-827
Ravalli County Planning Dep

Region 2 Office
3201 Spurgin Road
Missoula, MT 59804-3099
Phone 406-542-5500
Fax 406-542-5529
June 27, 2007

John Lavey
Ravalli County Planning Department
215 S. 4th St., Ste. F
Hamilton, MT 59840

Reference: Sapphire Country Estates, Lot 2E (Janes)--Proposed plat
modification

Dear Mr. Lavey:

We have reviewed this proposal to change a "no-build zone" to a "restricted area" designation on the plat, in order to allow for building a barn (and/or other agricultural buildings) in the no-build zone. We have not visited this location, but according to the USGS Topographic map for the subject parcel's location, there appear to be wetlands or marshy areas associated with lower Sweeney and Larry Creeks (and the Bitterroot River bottom area), directly to the east of this lot. We suspect that the "no-build zone" may originally have had to do with keeping these portions of Lot 2E open due to being "low lands." We do not know if Lot 2E includes any floodplain, but if it does include floodplain and if the plat modification is recommended to be granted, we recommend somehow communicating the issue of floodplain status to the current and future owners of the lot--in order to apprise them of the need for floodplain permits for any new construction (including, but not limited to, buildings, roads, placement of fill, excavation, etc.)

Thank you for providing the opportunity for FWP to comment on this plat modification.

Sincerely,

Mack Long
Regional Supervisor

ML/sr